FOR MYSORE STATE

Education (1953) Department

N/S SERIES.

G.O. NO. 479

Dated 9. 3 1953

[Despatch Abstract.]

Communist activities Sri C Govindan Nair
Kasaragod — Suspension of teacher's
Certificate — C.M. P. Nos 5407 and
5408 of 1951 High Court
Madras — Press for the. Order
Pleader for Appearance and
Work done Sanctioned.

(Writ of Certiorari - Order Nisi (to produce and to appear).

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Friday, the thirteenth day of April One thousand nine hundred and fifty one.

Civil Miscellaneous Petition No. 5408 of 1951.

Between
C. Govindan — Petitioner

1. The Divisional Inspector of Schools, Coimbatore.
2. The State of Madras.

Respondents.

To

The Secretary, Education Department representing the State of Madras, Fort St. George, Madras

2nd Respondent;

WHEREAS upon motion this day made unto this Court by Mr. A. Ramachandran for Messrs. Row and Reddy, Advocate for the petitioner and the Court being of opinion that the records in relating to the order dated 2-2-49 being memo R.C. No. 340/48 of the Deputy Inspector of Schools, Kottayam Taluk together with the decision therein, should be called for and perused, it is hereby commanded

Department Fort St. George, Madras, representing the State of Madras, 2nd respondent herein

(1) that you the Secretary, Education do send for our use in the High Court of Judicature at Madras all and singular the said records and orders with all things touching the same as fully and perfectly as they have been made by you, and now remain in your custody or power together with this our Writ on or before the 9th day of July 1951 at 10-45 A.M. and/or

Department, representing the State of Madras, Fort St. George, Madras, the 2nd Respondent herein

(2) that you the Secretary Education/ do also appear before us personally (or by Advocate) on the 9th day of July 1951 at 10-45 A.M. and show cause whey this petition should not be complied with, and that we may cause further to be done thereon what of righ and according to law we shall see fit to be done

WITNESS THE Honourable Mr. P. V. Rajamannar, Chief Justice of the High Court of Judicature at Madras this 13th May of April in the year One thousand nine hundred and fifty one.

RETURN OF THE WRIT OF CERTIORARI: ORDER NISI.

(To be endorsed on Writ to appear).

The process of the Writ of Certiorari whereof mention i within made, was served on Respondent this of one thousand nine hundred and fity.

Writ and Rule Nisi
C.M.P. Nl. 5408 of 1951.

Memo. No. Edn., d.,

Civil Miscellaneous Petition No. 5407 of 1951 – Suit – Notice.

P.1 c.7.

The notice of Suit

pp.5-11 c.7.

for Civil Miscellaneous Petition No. 5407 of 1951 and the copy of the petition and plaint received from the High Court of Judicature is forwarded to the State Counsel for taking necessary action in the matter.

O/ADS

The Dept has indicated some alterations in pencil on the draft. The State Counsel may be instructed to prepare a Counter-affidavit and send it on to the Post for approval. They will, I am sure, obtain sufficient time for the Court to enable them to receive instructions and prepare the case. The draft may perhaps be amplified in the light of

Education Department(D)

Civil Miscellaneous petition No. 5407 of 1951--Suit--Notice--

MEMO.No. 15214-D/51-2. Edn. dated 24-4-51.

The notice in Civil Miscellaneous petition No. ~~5407~~ 5407 of 1951 and the copy of the petitioner's affidavit received from the High Court of Judicature is forwarded to the State Counsel for taking necessary action in the matter. He is also requested to prepare a counter-affidavit and send it on to Govt. for approval.

To State Counsel, with original of Notice)

Sent by Spl. messenger.

24/4/51

24/4/51

MEMO No. 15214-D/51-4Edn. dated 8-5-51.

Civil Miscellaneous Petition No.5408 of 1951 -Suit

Ref:- From the High Court of Judicature at Madras Writ of Certiorari Civil Misc.petition No.5408 of 1951 dated 16-4-51.

The order Nisi-Writ of Certiorari in CMP 5408/51 received from the High Court of Judicature at Madras is forwarded to the State Counsel for taking necessary action.

2. The State Counsel is requested to prepare a counter affidavit and send it on to Govt. for approval They are also requested to obtain sufficient time from the Court to enable them to receive instruction and prepare the case.

3. The D.P.I. is requested to furnish the State Counsel with all information required by them for the conduct of the case. The State Counsel may take instructions from the D.P.I. direct as and when necessary.

4/5/51

7.5

Communist Activities of teacher Sri C.Govindan of North Malabar Distric
Suspension of the teachers' Certificate - Writ in the High Court
CMP No.5407 of 1951.

Ref: Your letter Rc.No.396 EA/51 dt.22-4-51 addressed to the Director of Public Instructions.

From the Director of Public Instruction, Madras R.C.No.1255 B5/51 dated 25-4-51

From the Government, Education Department Memorandum No.15214-D/51-2 dated 24th April 1951.

We are sending herewith a copy of the affidavit filed by the petition in the above matter. Kindly give us detailed instructions, traversing every allegation in the affidavit, either admitting, denying or put the petitioner to strict proof, to enable us to prepare the counter affidavit. On receipt of your notes we will prepare the counter and send it to Government for approval.

The above case did not come up on the 27th ultimo. It may come up after the re-opening of the Court in July.

Kindly let us have your instructions at an early date.

Yours faithfully,

The Divisional Inspector of School,
Coimbatore.

The State of Madras Respondents.

AFFIDAVIT OF C.GOVINDAN.

I, C.Govindan, son of Kanaran, aged about 48 years, Hindu teacher by profession, residing at Dharmadom Amson, Melure Desom, Kottayam taluk, North Malabar District, and now temporarily staying at Madras, do hereby solemnly and sincerely affirm and state as follows:

1. I am a citizen of the Indian Union and am the petitioner herein. I was a certified teacher having passed higher elementary traning Examination in 1929 and was serving as a teacher since then. For the last three years, I was employed in Melur Aided Elementary Boys School as a teacher. I state that teaching has been my only soures of living and my only profession.

2. While I was employed in the abovementioned school in the first week of February 1949, the Manager of the school showed me an order passed by the first respondent communicated to him by the Deputy Inspector of Schools, Kottayam Taluk being R.C. No.340/48 dated 2-2-49 a true copy of which I am filing her with marked as Exhibit A. By this order the first respondent purportin to act under rule 154 of the Mad as Educational Rules and Rule 14 of the rules relating to Elementary Schools suspended my certifia as teacher and withdrew my service register until further orde s on the ground that I was unsuitable. I was thus made noneligible for appointment as teacher in any school.

3. I state that this action was taken and the order passed by the first respondent without framing any charges or giving any r for the said order. I further state that till now I have neither been informed of the reasons for the said order of the first

respondent nor have any charges been framed n
held. This order is an arbitrary one and withou
to me.

4. I made representations by letters to the Di ..or of Public Instruction as well as the Divisional Inspector of School,s Coimbatore on 22nd February 1949 and again on 27-6-49. In October 1949 I received a memo dated 12-10-49 signed by the Deputy Inspector of Schools informing me that the question of restoring my certificate was under consideration of the Department asking me to send a certificate from a responsible gentleman of my locality to the effect that I was devoid of any political activities of the Communist party. Immediately I sent to the Deput Inspector of Schools two such certificates.

5. After waiting for a few months, I again sent a letter to the Divisional Inspector of Schools, Coimbatore on 7-10-50 praying for the restoration of my certificate and another to the District Educational Officer, North Malabar on 23-2-51. I have not received any reply so far to those representations made by me. To this day my certificate has not been restored to me thoug I have made repreated requests and I am being prevented from carrying on my profession as a teacher.

6. I am advised that rule 154 of the Madras Educational Rules an Rule 14 of the rules relating to Elementary schools which are rules made by the second respondent are void and of no effect, as they are rules made without statutory authority. In any event, those rules are void after the 26th January 1950 as they are inconsistent with my fundamental rights granted by the Constitutio of India and more particular those rights under Article 19(1)(a) and (g) thereof. I am also advised that the said rules are void also because the said rules do not provide any standards of conduct which will render a teacher's certificate to be cancelled. This I submit amounts to an unauthorised delegation of power by the second repondent to the first respondent.

6. I state that the effect of the order of the first responden is in effect of- a complete prohibition of my right to practise

my profession as a teacher in any school whatsoever and therefore a complete negation of my fundamental right under article 19(1)(g) of the Constitution of India that too without assigning any reason whatsoever or holding any enquiry. For the last two years I have been without a source of livelihood and unable to follow my profession as a teacher and I am thus being prevented from exercising my fundamental right of practising my profession.

5. I am advised that I have no other remedy for the enforcement of my fundamental right of freedom to follow my profession as a teacher.

I therefore pray that this Hon'ble Court will be pleased to issue such directions or orders or writs as are appropriate in the circumstances mentioned above for the enforcement of my fundamental right to practise my profession as a teacher and thus enable me to earn my livelihood.

Solemnly affirmed on this the ....

L.No.152/14-D/51.

Edu.Dept.(C)

May be ~~filed~~ Lodged.

4/7/51

5/7/51

4/7/51

Sub: Communal politics of teachers - Tri C.Jayaraman - North Arcot District - Suspension of teacher's contribution - Petition in this regard.

Ref: Your letter C.No.C4-3/51 dt.10-6-51.

We agree that it may not be necessary to file a counter when the case is posted for hearing we will report the fact that the certificate of the petitioner has been restored.

Yours faithfully,

for Secretary.

To:

1.The Asst.Secretary to Government, Education Department.
2.The Director of Public Instruction, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.
SPECIAL ORIGINAL JURISDICTION,
Wednesday, the Thirtieth day of July,
One thousand nine hundred and fifty two.

Present:-

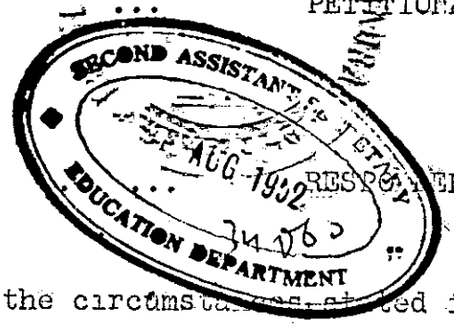
The Honourable Mr. Justice Subba Rao.

Civil Miscellaneous Petition No.5408 of 1951.

C.Govindan. ... PETITIONE

-Versus-

1. The Divisional Inspector of Schools, Coimbatore.
2. The State of Madras, Madras. ... RESPONDENTS



Petition praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to issue a Writ of Certiorari calling for the records -- relating to the order dated 2-2-1949 in Memo Rc.No.340 of 1948, of the Deputy Inspector of Schools, Kottayam Taluk, and to quash the order made therein.

This Petition Coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and the order of High Court dated 13th April 1951 and made herein, and the material records in the case, and upon hearing the arguments of Mr. A. Ramachandran for Messrs. Row and Reddy, Advocate for the Petitioner and of Mr. V.P. Sarathy for the GOVERNMENT PLEADER on behalf of the Respondents, the Court made the following

Education Dept-C

Draft

Memo. No 34060-C52 1 Edn, dt 28/6/52

Sub Civil Miscellaneous Petition 5408 of 1957 in Suit — Notice

Copy of the Judgment of the High Court in C.M.P. No 5408 of 57, is forwarded to the D.P.I for information.

D/W 28/6

To
The D.P.I.
(with copy of
P. 13 CF)

Rec
29/6/52

Letter / Reg. No. 34060-C/52. 2 Sh., dt. 25/8/52

To

The ~~Secretary~~ Registrar, Appellate Side,
High Court of Madras.

Sir,

Sub:- C.M.P. No. 5408 of 57. Judgment

I am to request that the enclosures to the Judgment may be sent as they have not been received in this office

Yours faithfully

26/8/52

for 26/8/52

27/8/52

OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION, M A D R A S.
R.C.No.1255 B5/51 dated 26th August 1952.

***

Sub: Communist Activities - Sri C. Govindan, North Malabar District - Suspension of teacher's Certificate - C.M.P. NO.5407 & 5408 of 1951 High Court, Madras - Fees for the Government Pleader for appearance and work done - Sanction of.

Ref: 1) Letter No.5923 dated 31-7-1952 from the Government Pleader, High Court, Madras.
2) Letter No.5922 dated 31-7-52 from the Government Pleader, High Court, Madras.

:::

(Copies) Submitted.

Kind attention is in this connection, invited to Government Memo.No.15214 D/51-4 Education, dated 8-5-51 forwarding the order Nisi Writ of Certiorari in C.M.P.5408/51 to the State Councel for necessary action.

FOR DIRECTOR OF PUBLIC INSTRUCTION.

To
The Secretary to Government, Education Department.
Copy to the Government Pleader, High Court, Madras.

...

Copy of letter No.5922 dated 31st July 1952. From the Government Pleader, High Court, Madras. To the Director of Public Instruction Madras.

...

Sub: Communist activities of teacher Sri C. Govindan of North Malabar District - Suspension of teacher's certifidate - C.M.P.No.5407 and 5408 of 1951 - High Court, Madras.
Ref: Your R.C.No.1255 B5/51 dated 25-4-1951.

...

The above matter came up before His Lordship the Hon'ble Mr. Justice Subba Rao on 30-7-1952. As the teacher's certificate had already been restored, the petition was dismissed, but there was no order as to costs.

/True copy/
-:-:-:-

Copy of letter No.5923 dated 31st July 1952. From the Government, Pleader, High Court, Madras. To the Director of Public Instruction, Madras.

...

Sub: Communist activities of teacher Sri C. Govindan of North Nakabar District - Suspension of teacher's certificate - C.M.P. No.5407 & 5408 of 1951 - High Court, Madras - Sanction of fees for appearance and work done.
Ref: Your R.C.No.1255 B5/51 dated 25--4--1952.

:::

Government are requested to issue orders sanctioning payment of fees in the above case disposed of on 30-7-1952.

To The Government Pleader for appearance and work done in C.M.P. No.5407 & 5408/51: Rs.160/-

(Rupees One hundred and sixty only)

/True copy/

Common Achin. Sri. C. Gun
N. Malla Dt. Suspension of Teach
Certificate CMP. No 5247 & 5408/5
High Court ... Fees to Govt. Pleader.
/ For the D. P. P. Rc. No 1253/B1/
83 dt 68 3

The D. P. P. is requested to state the particulars of CMP 5247 & the order passed by the High Court on it. He is also requested to state whether this C.M.P. was dismissed on the ground that the teacher certificate was received by Govt A duly reply may be

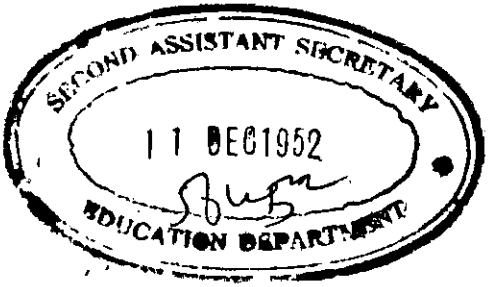
The Director of Public Instruction,

Madras

To

The Secretary to Government

Education Department



Rc.1255-B.5/51 - dated 4-12-1952

Sir,

Sub: Communistic activities - Sri C. Govindan - North Malabar - Suspension of certificate - C.M.P No. 5407 and 5408/51 ~~dax~~ High Court - Fee for the Government Pleader

Ref: Government Memo.No. 34060 C/52-4 Edn, dated 27-10-1952

C.M.P. No. 5407 and 5408/51 refer to one and the same case viz., abc C. Govindan, Attention is invited to Government Memo.No. 34060.C/52-1 Edn. dated 25-8-1952 forwarding a copy of the Judgment of the High Count C.M.P. 5408/51 from which it may be seen that the petition has been dismissed without costs on the ground that the teacher's certificate has been restored.

Youns faithfully,

for Director of Public Instruction

Education Deptt.(C)

Sub: Communist activities-Sri C.Govindan, North Malabar Dt.-Suspension of teacher's Certificate -C.M.P.No.5407 and 5408 of 1951, High Court, Madras- Fees for the Government Pleader for appearance and work done-Sanctioned

Read: From the Govt.Pleader, Madras, No.5293, dated 31-7-52
From the D.P.I., No.1255-B5/51, dated 26-8-52.

..

O R D E R(Ms) No. 479 Edn. 9/3/53

Sanction is accorded for the payment of a fee of Rs.100/- (Rupees one hundred only) to the Govt. Pleader, Madras, for his appearance and work done on behalf of the State of Madras in the C.M.P. No.5407 and 5408 of 1951, in pursuance of the instructions issued in Memo No.15214-D/51-4 Educatior dated 8-5-1951.

2.The expenditure will be debited to "27. Administration of Justice-b.Law Officers-C.Allowances and Honoraria -Fees to the Advocate -General and Govt. Pleaders-Voted."

13/1/53

Memo. No. Edn., dated,

Yet to issue

Civil Miscellaneous
Petition No. 5408 of 1951 — Suit.

pp. 4 - 5 c. 7

Ref: From the High Court of
Judicature at Madras,
Writ of certiorari, d. 16-4-51
Civil Mis. Petition No 5408 of 1951. d. 16.4.51.

Note:

Legal may see before issue.

8/4/51.

JSM
30/4/51

Legal

1.5

Legal

This Dept have indicated some corrections required to be made in the draft

The Advocate concerned may be asked to obtain a copy of the affidavit and prepare a counter-affidavit and send it on for the approval of the Govt. They may be informed that all the necessary instructions in the matter will be given to them by the D.P.O., or the Divisional Inspector of Schools, or the Education Dept as the case may be. It is desirable to inform

W.O. No. 152/14/51-3
1-5-51.

0

AD

ASSISTANT SECRETARY
7447
2-MAY 1951
LEGAL DEPARTMENT

Please see the letter of the D.P.I. No. 17CE forwarding copies of the letters of the Govt. Pleader, Nasik. The Govt. Pleader requests that a fee of Rs. 160/- may be sanctioned to him for appearance & work done in C.M.P. No. 5707 & 5708/51. This may be sanctioned. A draft order is submitted for approval.

Legal, Home & Finance may see before Gen. No. M.3406.462.
22/9/52.

Sr
15/9/52

Home
17/9/52

Legal
16/9

Legal
19/9

ASSISTANT SECRETARY
LEGAL DEPARTMENT
LSD 43
22 SEP 1952

the State Council early enough as to the person from whom they should take instructions. The administrative dept will, no doubt, decide - & who should give instructions to the State Council and then inform that person & the State Council accordingly.

The draft may perhaps include matters referred to above.

H Cook
2/5/51

Edn Dept

Dept m b.4 and the information required by that Dept. is not available here. The DPI may be asked to furnish

A draft memo. is submitted

25/10/--

I issued as memo. No. 34060.C52. Estt. dt. 27-10-52)

—

From the DPI., no. 1255-B5/57, dt 4-12-52

—

The DPI. states that the C.M.Ps no. 5405 & no. 5407 refer to one and the same case, Viz, Sri C. Govindan and that with the C.M.Ps. has been dismissed without costs.

The draft order below may issue

Legal, Home & Finance may see.

18/12/52

JD
18/12

18/12/52

Legal
Home
Fin

The case relates to the payment of fee to the G.P. Madras for his work in connection with C.M.P. Nos. 5407 & 5408 of '51 on the file of the High court Madras. The case has been sent to this dept. with ref. to Legal opinion note on p. 5 ante.

R. The G.P. Madras has claimed a fee of Rs. 160/- for his work in the two petns. A copy of the order of the court is at p. 13 c/f. Both the petns refer to one and the same case. As the teachers' certificate was restored, the petn was dismissed without costs. It will appear from X on p. 13 c/f that Sri. V.P. Sarathy appeared for the G.P. and that there were arguments on both the sides.

The main file relating to the question of revising the scale of fees prescribed for the State Counsel and the fee now allowed to the G.P. for losing their addl. duty and for his work in Writ petns in general, is kindred. The High court and the G.P. also addressed on the question and their repls. have not been received so far. They were reminded on 10/1/53. The Adv. Genl. who was consulted has stated among other things that if and

Law officer is apptd. To handle writ Petns/ considers that a fee of Rs. 50/- per writ Petn would be reasonable, The advantage of such an arrangement being that it will not be necessary for Court to scrutinise each case. It will appear that it may take some more time to arrive at a decision in their case. It may be mentioned in this connection that there was a clash of opinion between this dept and the Legal dept regarding the payment of fee to the G.P. in a writ Petn. This dept was of the view that a fee of Rs. 160/- shd be allowed to the G.P. while Legal dept for the payment of the fee fixed by the court. It was decided in circular that the fee allowed by the court might be paid. However, in cases where the court does not fix the fee, the case is examined on merits and the fee sanctioned to the G.P please see the extracts of notes at pp 1-b of (A)t.

In view of what is noted at A on page 6 ante it is for orders whether this dept may suggest the payment of a fee of Rs. 100/- to the G.P. in these two petns. After orders are passed the case may be rtd. to Edn dept. That Dept may be requested to let Legal and fin see the case.

Only the junior to the G.P appeared in this case and the High Court has not fixed any fee for the Advocate. In the order it is stated that as the certificate has been restored, the petition becomes unnecessary, and is dismissed without costs. A fee of Rs. 100/- seems to be quite reasonable as against Rs. 160/- claimed by the G.P

17-11

Please see the note of Home Dept. on pp. 6-7 ante. That Dept. suggest that a fee of Rs. 100/- seems to be reasonable as against Rs. 160/- claimed by the Govt. Pleader. The suggestion of the Home Dept. may be accepted. A revised draft order is submitted. Legal and Finance may see.

1/1/53

24/1/53

24/1

As both the petitions related to the same matter one fee would be reasonable. But even that is not what would be justified by the rules as they stand which as I said once before need revision to provide for such contingencies. But there is no justification for levying less than Rs 160/-

29.1

Home (Ch. III) Dept.

(Previous note of this Dept. on pp. 6-7 ante)

The notes of Edn. Legal and Fin depts. ante may be perused. Legal Dept. seems to be of the view that Rs 160/- shd. be paid to the in this case. This Dept. — p. 7 ante is on the orders on circulation in another similar and may, therefore, be attended to.

After orders are passed the case may be put to Fin.

It may also be mentioned here that in connection with a proposal to appoint a law officer exclusively for Writs, the Adv. Genl suggested that the law officer in charge of writs could be paid Rs 50/= for every writ uniformly so that the Govt. need not scrutinise the bill in every case. Having regard to that as of the fact that only the junior of the G.P appeared in this case, it does not appear that Rs 100/= for the two CMPs is low.

15.2.1953

15.2.53

The notes of Legal, Home & Finance Depts. at pp. 8-9 from pp. 8 & ante may be perused. Handwritten note may now obtain. Legal dept. may see the case again with ref. to the notes of Home & Finance Depts. on the previous page.

9/2/53

10/2/53

S/Legal

11/2

ASSISTANT SECRETARY TO GOVERNMENT 16 FEB 1953

SECOND ASSISTANT SECRETARY 6900 14 FEB 1953 EDUCATION DEPARTMENT

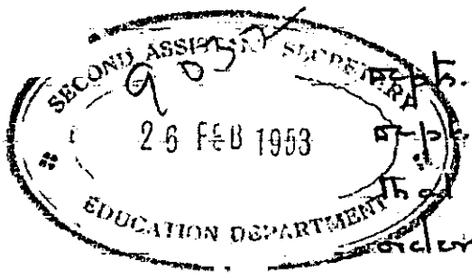
Govt. M. 3496. 6.52.8

13/2/53

ASSISTANT SECRETARY 2698 17 FEB 1953 LEGAL DEPARTMENT

This department does not propose to disagree with the view that the fee proposed would be reasonable. It only points out what the rules provide. Otherwise the rules should say that Govt. would pay only such fees as the Taxing Officer may allow. Then the whole basis of the Government grant to Lawyers appearing on behalf of Govt. filing fee certificates from before they receive their fees would be gone, as was pointed out in connection with another file regarding amendment of standing orders.

(Previous note of this Dept. on p. 9 ante)



The further notes of Legal and Edn. Depts. on p. 10 ante may be perused. W.r.to Legal note at ~~of~~ on p. 10 ante, it may be noted that the question of amending the present Standing orders relating to the payment of fees to the G.P. Madras and those in the mofussil on the lines suggested by the previous Legal Secy. in another connection has been examined in detail again in the light of the Legal Dept's views and the case has been sent to Legal ~~for~~ for remarks.

The draft order may be accepted & the case returned to Edn. Dept.

GL
27/2

A.D.S.
27/2/53

GOMS

draft order may now issue.